

The Qur'an as the Original Source of Islamic Law

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Abstract

Every legal system has a source. The body of rules, precedents and all of the things that comprises that system. For example, the Nigerian legal system can be said to comprise of laws enacted the parliament, customs of the land, judicial precedents, rules of common and principles of equity etc. Similarly, the Islamic legal system has many sources that come together to make it whole. However, unlike the legal systems of countries, the Islamic legal system is divine and is a total way of life. *Shariah* is the entire body of Islamic law, and the term literally means "the way to the water source." It is a wide-ranging body of law and personal rules, regulating matters not limited to jurisprudence, politics, business, banking, family, and society. The main objectives of the *Shariah* is to ensure that human life is based on *ma'ruf* (good) and to cleanse it of *munkar* (evils). Adherent of Islamic law do not view it merely as a tool for governing the affairs of men in this world, but also as a means of achieving divine mercy in the afterlife. The Qur'an is the central religious text of Islam. And being one of the major sources of Islamic law, is jealously guarded by the Muslim ummah. It is considered to be the holiest book on earth, and it is believed to contain the solution to every legal problem in the world. The book is constantly being studied by scholars and exegesis of the Qur'an is being given all around the world almost daily. With this in mind, the writer attempts to examine the Qur'an as one of the sources of Islamic law. Understanding its source, its revelation, compilation and preservation. Attempt is also made at understanding how the verses contained in the Qur'an are categorized and the legal principles contained in them.

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Introduction

The sources of Islamic law (*edille-i şerr'iyye, mesâdir-ı'r'yye*) are divided into two i.e the primary and secondary sources. The primary sources are the Qur'an, *hadith* (collections of the Sunnah), *Ijma'* (juridical consensus) and *Qiyas* (analogical reasoning), which are unanimously accepted by all the four legal schools. The secondary sources are tools such as *Istihsan* (Juristic preference), *Istishab* (presumption of existence or non-existence), fatwa of the Companions, previous rulings and general principles on which there is no consensus amongst the four legal schools. Some of these tools are either not accepted at all or not utilized by some of the schools as they are often considered to be within the purview of the primary sources. [one]

While some of these sources (which can be either written or unwritten) contain legal provisions regarding social relations, some of them constitute the methods by which legal verdicts/rulings are arrived at. The Qur'an, *hadith*, *Ijma'*, previous rulings and *fatwa* (ruling) of the Companions, and *urf* (customs) are example of the sources that contain legal provisions. While *Qiyas*, *Istihsan*, *Istislah*, *Sadd-al dhariyyah* (blocking inroads to mischief) and *Istishab* are the methods by which a legal verdict/ruling is reached.[2] General principles of law, are also usually classified amongst these methods.

The Sources of Islamic law were described by The Prophet (SAW) in the following *hadith*. Muaz bn Jabal was sent to Yemen as governor. The prophet asked him, "How will you judge there?" and Muaz replied, "With the book of God." The prophet continued, "If you can't find it in the book of Allah?" and he replied, "With the hadith of the Messenger of Allah". The prophet asked again, "If you cannot find it in the hadith of the Messenger of Allah?" and Muaz replied, "I will decide using my own legal reasoning (*ijtihad*)". The Prophet was pleased with the replies given by Muaz.[3]

Qur'an

The holy book that was sent down to the last prophet, Muhammad (SAW), is the Qur'an. It was revealed in Arabic language through angel Jibril and its provisions are valid and applicable until the Day of Judgment.[4] The Qur'an has other names such as Al-Furqan, Al-Hakeem, At-Tanzeel etc.

The main source of Islamic law is this holy book i.e. the Qur'an.[5] Other sources address legal issues by interpreting and explaining the verses of the Qur'an.

Since the words and meaning of the Qur'an belongs to Allah (SWT), it is often referred to as *wahy-i metluv* (Divine revelation). The *Hadith* being the words of the prophet albeit with divine meaning, is often referred to as *wahy-i gayr-i metluv*. [6]

The Qur'an was conveyed by narrators so numerous that it is not conceivable that they have agreed upon an untruth. Thus, all words, verses, and surahs are verified as *mutawatir* (Indubitable).[7] No word, verse or surah has been changed or could have been changed. It has been memorized by thousands of memorizers in different periods and has been passed on from generation to generation [8]

The Qur'an was revealed within a period of 23 years, starting from 610 AD when Prophet Muhammad received his prophethood to 632 AD. All Verses were revealed by Allah (SWT), through angel Jibril (AS), to Prophet Muhammad (SAW), memorized by the Companions, and were written down on various items such as wood, stone, leather, and bone.

At the battle of Yamama in 632 AD, during the caliphate of Abu-Bakr (RA), 70 memorizers of the Holy Qur'an were martyred in the battlefield. Umar (RA) was so worried about this that he approached Abu-Bakr (RA) and asked that immediate measures be taken to protect the Qur'an. Thereupon, Abu-Bakr (RA) commissioned a committee with Zayd b. Thabit (RA) as leader and tasked them with the responsibility of bringing the Qur'an together in a single book. This committee consisted of prominent companions like Usman bn Affan (RA), Ali bn Abu Talib (RA), Talha (RA), Abdullah b. Mas'ud (RA), Khalid b. Walid (RA) etc. Whoever had any portion of the Qur'an written on any item was asked to bring it forward. Further, they committee required that

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any companion who had any portion of the Qur'an memorized to come forward and read them out loud to the hearing of all and to also produce two witnesses to testify/verify as to the accuracy of the verses so read. Known for the beauty of his handwriting, Said b. As (RA), was asked to write down all the verses of the Qur'an. The final copy was read before all the companions and there was no objection. Later, this final copy was handed over to Umar (RA) for safe keeping, and after his death, to his daughter and one of the prophet's wife, Hafsa (RA).[9]

During Armenian wars and at the time of the reign of Usman bn Affan (RA), there emerged a variation in the recitation of the holy Qur'an between the Damascenes and Iraqis.

Usman (RA) once again commissioned a committee under the leadership of Zayd b. Thabit (RA). The earlier compiled copy, which was in the possession of Hafsa (RA) was requested. However, the surahs were found not to have been arranged in this copy. The copies in the possession of Ali (RA) and Abdullah b. Mas'ud (RA) were also brought. In Ali's (RA) copy the surahs were found to have been arranged according to the time of revelation, while in Ibn Mas'ud's (RA) copy the surahs were arranged according to their lengths. The surahs were eventually all written in Quraysh dialect and arranged according to their lengths and according to their subject matter. The arrangement and sequence of all the ayahs of the Qur'an was made known to the Prophet (SAW) through divine revelation, however, the arrangement of the surahs were not so known. Thus, the order or arrangement of the surahs in the Qur'an as it is today was done through the *ijma'* of the companions. Thereafter, the old copy of the Qur'an, along with every other copy were destroyed. And a new copy was produced. Six more copies were reproduced from this new copy and were sent to Bahrain, Damascus, Basra, Kufa, Yemen and Mecca. The copies of the Qur'an, which are found all over the world today, have been reproduced from these original seven copies and there is no difference between them.[10]

These new copies did not have any signs or dots and this made them difficult to read, particularly for non-Arabs. Thus, in order to facilitate easy reading, some punctuation marks were developed by Abu'l-Aswad Ad-Duali. These punctuation marks were further developed by Nasr bn Asim Al-Laysi. Halil bn Ahmed later developed the *Madde* and *Shadda* marks.¹¹

The Qur'an is not a law book or a law journal. Some authors categorized the verses of the Qur'an under general headings such as monotheism, prophethood, life after death, justice etc. Others

categorized them according to the period they were revealed, the verses revealed in Makkah were more faith oriented whilst the verses of Madinah were more about worship and social relations.

The number of law-related verses in the Qur'an has been a subject of controversy among scholars. This difference of opinion arises from the fact that the number of verses in which a particular legal subject is addressed directly are few, whilst verses in which legal subjects were highlighted and discussed indirectly are much more in number. Accordingly, only about 150 verses contain legal issues which were mentioned and addressed directly. On the other hand, verses that discuss legal issues indirectly could be at least 500 or even a thousand.[12]

Islamic jurists also draw legal conclusions from the *Qissah* (stories) in the Qur'an. For example, from the word "*wamru atuhu*" (his wife) in the fourth verse of Surah Al-Masad (Q 111:4), which is not one of the verses containing a direct legal conclusion, it has been inferred (and concluded) that the marriage of non-Muslims living in *Darulharp* (non-Islamic countries) is legally valid from an Islamic perspective.[13]

The verses related to law in the Qur'an are classified into three categories. The first category contains the verses that describe the general provisions on legal matters. Matters such as justice, principles of Shurah, to take the principle of *pacta sunt servanda* principle of privity of penalties, criminal and verses related to the consideration of the balance of the penalty can be given as examples of the first group.

The second category contains the verses in which a legal issue is briefly and summarily described. Some of the verses related to *zakat* (obligatory alms), *riba* (interest prohibition), *Hadd* (capital) and *Qisas* (retaliation) punishments are examples of some of them.

The third category contains verses in which legal issues are highlighted and dealt with in details. Verses related to the rules of marriage, divorce and inheritance are examples from this category.

It is generally accepted in the Qur'an that some verses were abrogated, that is, the application of their provisions were abolished. These verses are usually related to some temporary situations at that particular time and are thus, similar to today's temporary laws. For example, in verse 221 of the Surah Al-Baqara, believing men and women were forbidden from marrying non-believers, but with the revelation of verse 5 of Surah Mai'dah, the prohibition was partially lifted as believing men were allowed to marry women from the People of the Book. However, there are some scholars

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who do not accept this view, while some others accept it but propose different views on the number of abrogated verses and the extent of abrogation. [14]

Conclusion

The Qur'an, being the foundation of all shariah, is indeed very critical to the way of life of all Muslims. It has therefore become imperative to try and grasp what this holy book really is. One of the *maqasid* (objective) of *Shariah* is the preservation and protection of the Deen (religion) under all circumstances. in order to do achieve this, as well the other *maqasids* of the *Shariah*, one has to understand its foundation.

References

[1] Abdulvehhab Hallaf, Ilmu Usuli'l-Fiqh, Cairo 1361, p. 21 et al.

[2] Ahmet Yaman / Halit Çalış, Introduction to Islamic Law, Istanbul 2013 , p. 41.

[3] Tirmidhi, Ahkam 3; Abu Davud, Akdiye 11.

[4] İsmail Köksal, Fıkıh Usûlü, Istanbul 2008 , p. 41; Al-Amidi, Al-Ihkam Fi Usuli'l-Ahkam, Riyadh 1424/2003, p. 215.

[5] "Salvation is in the book of Allah. There is knowledge of those before you and those of you after you. The judgment between you should always be according to him. He is not a game-fun,

but a principle. Allah destroys the cruel that leaves him. He deflects the seeker of guidance, he is the steadfast rope of Allah, his wisdom, and his straight path. When they heard, they said, "We have heard a very astonishing Qur'an that shows the truth." Yes ... The words of the person who speaks to him are verified. He receives the equivalent of him. He makes the right decision for him. Tirmidhi, Fedailü'l-Koran 14.

[6] Köksal, p. 38 et al.

[7] Hallaf, p. 24.

[8] You should know, c. 1 second. 45.

[9] Ekinci, Islamic Law, p. 68.

[10] Ekinci, Islamic Law, p. 69.

[11] Köksal, p. 43.

[12] Hayreddin Karaman, History of Islamic Law, Istanbul 2001, p. 57.

[13] Ekinci, Islamic Law, p. 72.

[14] Musa b. Mohammed co-Shabati, al-Muvafakat, al-Akrubiyye, h. 1417- 1997, c. 3, p. 335-336.